



County of Los Angeles
CHIEF EXECUTIVE OFFICE

713 KENNETH HAHN HALL OF ADMINISTRATION
LOS ANGELES, CALIFORNIA 90012
(213) 974-1101
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

January 15, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**DEPARTMENT OF PUBLIC HEALTH:
APPROVAL OF STANDARD AGREEMENT FOR FISCAL YEAR 2007-08 FROM
THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH FOR
THE AIDS DRUG ASSISTANCE PROGRAM
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Director of the Department of Public Health (DPH), or his authorized designee, to accept and sign the California Department of Public Health's (CDPH's) Standard Agreement (Exhibit I) for Fiscal Year (FY) 2007-08 for the AIDS Drug Assistance Program (ADAP) administered by the County of Los Angeles DPH's Office of AIDS Programs and Policy (OAPP), in the amount of \$389,648 for the period of July 1, 2007 through June 30, 2008, at no net County cost.
2. Delegate authority to the Director of DPH, or his authorized designee, to accept and sign CDPH's ADAP Standard Agreement for FY 2008-09, with substantially similar terms as the Standard Agreement for FY 2007-08, following review and approval by County Counsel and Chief Executive Officer and notification to the Board offices.

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

3. Delegate authority to the Director of DPH, or his authorized designee, to accept and sign any amendments to CDPH's ADAP Standard Agreement for FYs 2007-08 and 2008-09 with substantially similar terms, to rollover unspent funds and/or to increase or decrease each FY base award up to 25 percent, 100 percent offset with CDPH funds, subject to review and approval by County Counsel and Chief Executive Officer and notification to the Board offices.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The Board's approval of the Standard Agreement for FY 2007-08 is required by CDPH. These funds support the continuation of ADAP administrative services under various HIV/AIDS Amendments approved by the Board on February 27, 2007, which 1) support outreach and marketing efforts to make persons living with Human Immunodeficiency Virus (HIV) in Los Angeles County, who are not receiving care, aware of the services that ADAP provides; 2) reimburse providers for the cost of enrolling and recertifying clients for ADAP services; and 3) fund ADAP administrative costs which are incurred by DPH's OAPP. These activities are intended to improve access to antiretroviral therapy and other HIV-related medications.

An existing position, an Administrative Assistant III, is 100 percent funded by this ADAP award, and will be assigned full time, to implement and support the ADAP administrative services, through June 30, 2008.

FISCAL IMPACT/FINANCING

The total amount of funding under the Standard Agreement for FY 2007-08 is \$389,648.

Funding for this program is included in DPH's FY 2007-08 Final Adopted Budget and will be requested in future FYs as necessary.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Since 1987, the Board has approved Standard Agreements and related Amendments with CDPH, which support DPH's ADAP services. The allocation amount is determined by a formula based on the number of ADAP clients enrolled in Los Angeles County during each Calendar Year (CY). Most clients enrolled in ADAP are low-income and uninsured, with indications of advanced HIV disease.

Honorable Board of Supervisors

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ADAP is funded through the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act, which provides funding for a wide range of healthcare and supportive services. The funds allocated for this Agreement are solely for costs associated with the administration of the ADAP enrollment screening/recertification process provided by OAPP and its subcontractors. These administrative costs include: 1) reimbursement to the local jurisdiction for performing ADAP program enrollment or annual recertification services; 2) reimbursement by the local jurisdiction to its subcontractors for performing ADAP program enrollment or annual recertification services (at a rate determined by the local jurisdiction); 3) the Administrative Assistant III's (ADAP Coordinator) salary (or a portion thereof); 4) Internet access for ADAP enrollment workers to allow for submission of ADAP applications or re-certifications to the pharmacy benefits management (PBM) contractor via the Internet; and/or 5) development of ADAP client recruitment advertisement/outreach materials including specific local ADAP contact information.

The recommended Standard Agreement for FY 2007-08 will provide reimbursement to 16 community-based organizations (CBOs) and 10 County department sites (all of which maintain current contracts with DPH), for the enrollment and recertification of clients receiving ADAP services. It also provides reimbursement to OAPP for its administrative costs associated with ADAP, which allows for the continuation of a Countywide social marketing awareness campaign, advising persons living with HIV that drug treatment therapies are available to them at no or low cost, depending upon their eligibility.

Exhibit I has been approved as to form by County Counsel.

Attachment A provides additional information. Attachment B is the Grant Management Statement for awards exceeding \$100,000.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Acceptance of the Standard Agreement for FY 2007-08 will ensure that recruitment, enrollment, and the provision of outreach, marketing, and administrative ADAP services will continue, in an effort to provide these services to all eligible Los Angeles County residents. ADAP is a critical resource for providing prescription drugs to people with HIV/AIDS, who have no or limited prescription drug coverage.

Honorable Board of Supervisors
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CONCLUSION

The Department of Public Health requires four signed copies of your Board's action. It is requested that the Executive Officer, Board of Supervisors, notify DPH Contracts and Grants Division at (213) 240-8179 when this document is available.

Respectfully submitted,


WILLIAM T FUJIOKA
Chief Executive Officer

DEJ:SRH
SAS:RFM:bjs

Attachments (3)

c: County Counsel
Director and Health Officer, Department of Public Health

011508_DPH_ADAP

SUMMARY OF AGREEMENT

1. TYPE OF SERVICE:

The Standard Agreement for Fiscal Year (FY) 2007-08 will support the continuation of the AIDS Drug Assistance Program (ADAP) by assisting low-income people with HIV/AIDS, who have no or limited prescription drug coverage.

2. AGENCY ADDRESS AND CONTACT PERSON:

Office of AIDS, Contracts and Grants Unit
Mail Station Code 7700
1616 Capitol Avenue, Suite 616
P.O. Box 997426
Sacramento, California 95899-7426
Attention: Eyma Espinoza-Camp
Telephone: (916) 449-5935
Electronic mail (e-mail) address: Eespinoz@dhs.ca.gov

3. TERM:

The term of the requested Standard Agreement is for the period of July 1, 2007 through June 30, 2008.

4. FINANCIAL INFORMATION:

The total amount of funding under the Standard Agreement for FY 2007-08 is \$389,648.

Funding for this program is included in DPH's FY 2007-08 Final Adopted Budget and will be requested in future FYs as necessary.

5. GEOGRAPHIC AREA SERVED:

Countywide

6. ACCOUNTABLE FOR MONITORING AND EVALUATION:

Mario J. Perez, Director of Office of AIDS Programs and Policy

7. APPROVALS:

Public Health:

Jonathan E. Freedman
Acting Chief Deputy

Contracts and Grants:

Gary T. Izumi, Chief

County Counsel (approved as to form):

Andrea Ross, Senior Associate
County Counsel

Attachment B

Los Angeles County Chief Executive Office
Grant Management Statement for Grants Exceeding \$100,000

Department: Public Health – Office of AIDS Programs and Policy

Grant Project Title and Description

Approval of Standard Agreement for Fiscal Year 2007-08 from the California Department of Public Health for the AIDS Drug Assistance Program

Funding Agency California Department of Public Health	Program (Fed. Grant #State Bill or Code #) Standard Agreement for FY 2007-08	Grant Acceptance Deadline
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Total Amount of Grant Funding: \$389,648

County Match Requirements:

Grant Period: 07/01/07-06/30/08

Begin Date: 07/01/2007

End Date: 06/30/2008

Number of Personnel Hired Under this Grant: Full Time 1

Part Time 0

Obligations Imposed on the County When the Grant Expires

Will all personnel hired for this program be informed this is a grant funded program? Yes ☒ No ☐

Will all personnel hired for this program be placed on temporary "N" items? Yes ☒ No ☐

Is the County obligated to continue this program after the grant expires Yes ☐ No ☒

If the County is not obligated to continue this program after the grant expires, the Department will:

a). Absorb the program cost without reducing other services Yes ☐ No ☒

b). Identify other revenue sources Yes ☐ No ☒

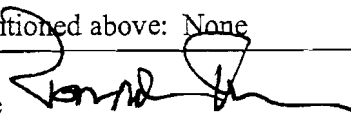
(Describe)

c). Eliminate or reduce, as appropriate, positions/program costs funded by this grant Yes ☒ No ☐

Impact of additional personnel on existing space: None.

Other requirements not mentioned above: None

Department Head Signature



Date

12-19-07

**Standard Agreement
AIDS Drug Assistance Program**

July 1, 2007 – June 30, 2008
Los Angeles County

The State of California by and through the California Department of Public Health (hereinafter called the Department) and the local health jurisdiction or its designated Community Based Organization of **Los Angeles County** (hereinafter called the local jurisdiction) in consideration of the covenants, agreements, and stipulations hereinafter expressed or hereby agree as follows:

Article I

1. The funds allocated pursuant to this Agreement are solely for costs associated with the administration of the AIDS Drug Assistance Program (ADAP) enrollment process provided by the local jurisdiction and/or its subcontractors. Any costs billed under this Agreement that are determined to fall outside the purview of this Agreement (i.e., are not directly related to the provision of ADAP enrollment services) will not be reimbursable under this Agreement. Some examples of acceptable and billable ADAP administrative costs incurred by the local jurisdiction are as follows:
 - Reimbursement to local jurisdiction for performing ADAP program enrollment or annual recertification services; or
 - Reimbursement by the local jurisdiction to its subcontractors for performing ADAP program enrollment or annual recertification services (at a rate to be determined by the local jurisdiction); or
 - ADAP coordinator's salary (or a portion thereof); or
 - Internet access for ADAP enrollment workers to allow for submission of ADAP applications or re-certifications to the pharmacy benefits management (PBM) contractor via the Internet; or
 - Development of ADAP client recruitment advertisement/outreach materials including specific local ADAP contact information.

If the local jurisdiction is uncertain of an acceptable and billable ADAP administrative activity, the local jurisdiction should seek written approval of the proposed activity from the Department.

This is particularly important should you wish to purchase any equipment using ADAP administrative funds. Any purchase of equipment such as computers, printers, filing cabinets, etc., requires prior written approval since it is considered to be the property of the Department. Since these purchases require prior written approval they must be procured, inventoried, tagged, and disposed of in accordance with prescribed administrative procedures.

2. The term of this Agreement is for the period July 1, 2007 through June 30, 2008.
3. The maximum allocation to the local jurisdiction for the term of this Agreement shall not exceed **\$389,648.00**.

Article II

1. The AIDS Drug Assistance Program Eligibility Guidelines, (revised March 2005) and any subsequent revisions, along with all instructions, policy memorandums or directives issued by the Department and/or the statewide ADAP contractor shall be adhered to in implementing and administering the ADAP by local jurisdictions. Any changes and/or additions to these guidelines will be made in writing by the Department and, whenever possible, notification of such changes shall be made 30 days prior to implementation.
2. It is the intent of the Department to have the local jurisdiction coordinate and ensure high quality, accessible ADAP enrollment and eligibility recertification services in its area. Each local jurisdiction can determine how best to accomplish this intent.
 - 2a. The local jurisdiction agrees to designate an ADAP coordinator to carry out the requirements of this agreement on behalf of the local jurisdiction and to act as the primary contact for the Department and the ADAP PBM contractor. The ADAP coordinator will be responsible for reporting and disseminating ADAP related information between the Department and the ADAP PBM contractor to enrollment site contacts (and enrollment workers), maintaining coverage for sites to meet enrollment and eligibility recertification needs, assisting the Department with enrollment site visits, and ensuring enrollment sites are in compliance with ADAP guidelines and policies.
 - 2b. Staffing constraints restrict the Office of AIDS (OA) from comprehensive monitoring of ADAP enrollment sites. Therefore, a freeze on adding new ADAP enrollment sites is in place. If an ADAP coordinator believes that a new enrollment site is necessary to replace a site that is no longer providing ADAP enrollment services, or to serve an underserved population in the local jurisdiction, the coordinator must contact the OA ADAP state coordinator to discuss the proposed new site. Approval of any new ADAP enrollment sites must be in writing from OA. The local jurisdiction coordinator agrees to notify the Department and ADAP PBM contractor of the deletion of any existing ADAP enrollment sites within 24 hours of such change.
 - 2c. Additionally, the local jurisdiction agrees that all ADAP enrollment/eligibility workers must be certified through, and have received training from the ADAP PBM contractor prior to enrolling clients in ADAP. All enrollment/eligibility workers must be identified by site specific individual ADAP enrollment worker identification numbers. Enrollment of ADAP clients must be linked to that individual identification number. Enrollment workers are deemed active and eligible to process ADAP enrollment applications on a yearly basis. In order to continue in this role, enrollment workers must attend an enrollment training workshop at least once annually. Failure to comply will result in enrollment worker deactivation. Enrollment sites and enrollment/eligibility workers

providing ADAP enrollment services in local county jails are included under this requirement.

- 2d. ADAP Coordinators must notify the Department regarding any changes in their assignment immediately upon changing their status. In addition, the ADAP coordinator must report any changes in enrollment/eligibility worker status to the ADAP PBM contractor within 24 hours of such change. Enrollment/eligibility workers no longer performing ADAP enrollment/recertification activities or those who have been terminated must be removed from the ADAP enrollment/eligibility worker database to ensure the confidentiality of that database. The ADAP PBM contractor will notify enrollment site contacts of the required method of reporting changes. The ADAP PBM contractor will send a quarterly report form to the ADAP coordinator to verify enrollment/eligibility worker status and identify changes, including periodic follow up calls, for verification.
- 2e. The local jurisdiction agrees that enrollment sites should be limited to community-based organizations, clinics, medical providers and case management services. For-profit pharmacy providers are not eligible to participate as enrollment sites. No ADAP eligibility worker(s) can be employed by nor receive any financial compensation, including gifts or any type of incentive, from an ADAP participating pharmacy. This requirement is to avoid any appearance of conflict of interest and to ensure ADAP clients have clear access to the pharmacy of their choice.
- 2f. The Department reserves the right to add new ADAP enrollment sites to ensure equitable and easy client access to ADAP services. The ADAP Coordinator in the appropriate local jurisdiction will be notified by either the Department or the ADAP PBM contractor of any new ADAP enrollment sites in their jurisdiction. The local jurisdiction is encouraged to reimburse enrollment sites for their ADAP enrollment/eligibility recertification activities. Whenever possible, the Department and ADAP coordinator will confer in advance when new ADAP sites are to be added by the Department.
3. The maximum amount payable under this Agreement as specified in item 3 of Article I shall be subject to the conditions specified in paragraphs 4 and 5 of Article III set forth herein. The Department reserves the sole right to amend this Agreement to make the adjustments specified in paragraph 10 of Article II.
4. The local jurisdiction must submit **quarterly** invoices in the format of Exhibit B, "AIDS Drug Assistance Program Invoice," consisting of one page and made a part hereof by this reference. **This invoice shall be received by the Department no sooner than the end of the quarter, and no later than 45 calendar days after the last day of each quarter.**

FIRST QUARTER:	July 1, 2007 – September 30, 2007
NO LATER THAN:	November 15, 2007

SECOND QUARTER: October 1, 2007 – December 31, 2007
NO LATER THAN: February 15, 2008

THIRD QUARTER: January 1, 2008 – March 31, 2008
NO LATER THAN: May 15, 2008

FOURTH QUARTER: April 1, 2008 – June 30, 2008
NO LATER THAN: August 15, 2008

Payment may be denied at the sole discretion of the State, for invoices that are received later than 45 calendar days after the last day of each quarter.

Supplemental invoices submitted by the local jurisdiction for any quarterly reporting period shall be limited to **no more than one (1) per reporting period** and **require prior written authorization from the Department.**

5. If there were no ADAP enrollments or recertifications processed in the local jurisdiction during a quarter, the invoice submitted for that quarter must show a zero balance and no reimbursement will be allowed for that quarter. ADAP enrollment data received from the statewide ADAP PBM contractor will be used to determine the number of ADAP enrollments/recertifications for each local jurisdiction during each quarter.
6. All invoices and other official communications shall be mailed to:

**California Department of Public Health
Office of AIDS
AIDS Drug Assistance Program
MS 7700 (REQUIRED)
P.O. Box 997426
Sacramento, CA 95899-7426**

7. The local jurisdiction and/or its subcontractor(s) agree to maintain necessary program records documenting the administrative costs submitted for reimbursement. Records shall be maintained for at least three (3) years from the ending date of this Agreement, or until the termination of all state and federal audits, whichever is later.
8. The local jurisdiction and/or its subcontractor(s) agree to provide access during normal working hours to authorized representatives of the Department and of other state and federal agencies to all records, files, and documentation related to this Agreement, subject to applicable state and federal laws concerning confidentiality.
9. The local jurisdiction shall be liable for all federal and state funds allocated under this Agreement, including but not limited to, any audit exceptions that may arise. The Department shall recover any funds not expended in accordance with this Agreement. Recovery of funds may be accomplished by withholding payments to

the local jurisdiction, or upon written notification from the State. The local jurisdiction shall submit repayment within 30 days of receipt of that notification.

10. If it appears the local jurisdiction will not expend the entire amount of its allocation under this Agreement, the State may redistribute any projected unexpended funds of the local jurisdiction's allocation to other local jurisdictions. The Department shall notify the local jurisdiction in writing 30 days prior to any changes in the local jurisdiction's allocation.
11. The local jurisdiction agrees to abide by all applicable laws regarding confidentiality and protected health information when working with persons who apply for and/or receive eligibility under this program.
12. The local jurisdiction agrees to the provisions as stated in the attached Exhibit C, entitled, "Nondiscrimination Clause and Requirements." The local jurisdiction and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, sex, or sexual orientation. Exhibit C, consisting of one page is incorporated and made a part hereof by this reference.
13. The local jurisdiction agrees to the provisions as stated in the attached Exhibit D, entitled, "**HIPAA Business Associate Addendum**" and agrees to ensure enrollment sites adhere to policies and procedures for the appropriate administrative, physical and technical safeguards of protected health information as established by this agreement.

Article III

1. The Department shall authorize payment in arrears up to the maximum allocation of this Agreement upon the execution of this Agreement.
2. Upon receipt of the quarterly ADAP invoice, the Department will reimburse the local jurisdiction for administrative costs associated with the provision of ADAP enrollment services in the local jurisdiction, not to exceed the maximum amount reimbursable under this Agreement. Reimbursements to the local jurisdictions will be contingent upon receipt of the signed Standard Agreement and a completed ADAP Invoice within the required timeframe.
3. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of federal or state funds for the mutual benefits of both parties in order to avoid program delays that would occur if the contract were executed after that determination. This Agreement is valid and enforceable only to the extent that sufficient funds are made available to the State by the United States Government and/or by the State for the purposes of this program. If sufficient federal and/or state funds are not made available pursuant to the Agreement, this Agreement shall be invalid and have no further force and effect. In this event, the State shall have no liability to pay any state funds

whatsoever to the local jurisdiction, or furnish any other considerations under this Agreement and the local jurisdiction shall not thereafter be obligated to perform any duties of this Agreement.

4. This Agreement is subject to any additional restrictions, limitations or conditions enacted by the Congress or the State Legislature, which may affect the provisions, terms or funding of this Agreement in any manner.
5. The terms of this Agreement may be modified in writing upon mutual consent of both parties.
6. This Agreement may be terminated at any time without cause by either party by giving 30 days prior written notice to the other. Notification shall state the effective date of the termination.
7. Notice of the termination by the local jurisdiction shall be followed within 30 days by a final report and a final claim for reimbursement, or repayment of funds disbursed but not expended.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto:

State of California

Local Jurisdiction

Signature _____
Thérèse Ploof

Signature _____

Title Acting Chief, ADAP Section
Office of AIDS

Title _____

Date _____

Date _____

AIDS DRUG ASSISTANCE PROGRAM (ADAP)
2007-08 ADMINISTRATIVE COSTS REIMBURSEMENT INFORMATION FORM
(Do not return this form unless you are making one of the following changes)

Name of Local Health Jurisdiction (LHJ)/Community Based Organization (CBO):

Name: _____ Title: _____ Telephone/E-mail: _____
Person Completing Form (Please Print or Type Information)

Please check the applicable box below:

Option 1: ☐ OA will enter into a Standard Agreement with our Local Health Jurisdiction (LHJ). We will begin providing ADAP enrollment services through the County public health department. The Community Based Organization (CBO) that previously served as ADAP Coordinator will no longer be the designated coordinator. Contact information for the new ADAP Coordinator is listed below:
County Public Health Department: _____
Address: _____
Phone Number: _____
ADAP Coordinator/Contact Person: _____

Option 2: ☐ Direct OA to enter into a Standard Agreement with the Community Based Organization (CBO) listed below. *If new/changing, you must attach a letter from the new CBO indicating their willingness to provide ADAP administrative/enrollment services in our LHJ. Contact information is listed below:*
New CBO: _____
Address: _____
Phone Number: _____
ADAP Coordinator/Contact Person: _____

Option 3: ☐ OA will enter into a Standard Agreement with our LHJ. We will sub-contract with a CBO to administer local ADAP services. We will identify the CBO prior to signing the Standard Agreement.

Option 4: ☐ We elect not to receive these funds at this time.

Designated Official (*Print or Type Name*)

Signature

Title: _____

Date: _____

Please fax this Form to:

Josie Ross at
(916) 449-5299

Mail the original form to:
Department of Public Health
Office of AIDS
MS 7700, P.O. Box 997426
Sacramento, CA 95899-7426
Attention: Josie Ross

AIDS DRUG ASSISTANCE PROGRAM (ADAP) INVOICE FORM

(Please submit all invoices using this form. Do not reproduce on other forms or letterheads.)

☒ **LOCAL HEALTH JURISDICTION:** _____

ADDRESS: _____

CITY/COUNTY: Los Angeles County

INVOICE FOR THE QUARTER INDICATED BELOW:

[] First quarter: July 1, 2007 – September 30, 2007	DUE DATE: October 31, 2007
[] Second quarter: October 1, 2007 – December 31, 2007	DUE DATE: January 31, 2008
[] Third quarter: January 1, 2008 – March 31, 2008	DUE DATE: April 30, 2008
[] Fourth quarter: April 1, 2008 – June 30, 2008	DUE DATE: July 31, 2008
[] (Final) Supplemental: July 1, 2007 - June 30, 2008	DUE DATE: To be determined

EXPENDITURE CATEGORIES

Expenses This Period

PERSONNEL – (Monies paid for ADAP Coordinator position at County Health Department or positions at ADAP enrollment sites) \$ _____

SUBCONTRACT(S) – (Monies paid to ADAP enrollment sites for successfully completed ADAP enrollments or recertifications) \$ _____

OTHER – (Please describe): _____ \$ _____

TOTAL AMOUNT OF INVOICE \$ _____

Payments are issued approximately **45** days upon receipt of invoice.

=====

Report prepared by: _____

(Please Print or Type)

(Telephone or e-mail)

I hereby certify that the above services have been provided in accordance with the terms of the ADAP Standard Agreement.

Signature of a Duly Authorized Health Jurisdiction Official

Date

This form must be submitted with original signatures.

Copies should be retained for the local health jurisdiction's records.

--STATE OFFICE OF AIDS USE ONLY--

X:														Date:									
Fiscal Year		PCA						Index				Object Code		Agency Object		Project Number				Work Phase			
0	7	5	2	6	1	2	5	4	1	4	7	0	2	0	3								

NONDISCRIMINATION CLAUSE AND REQUIREMENTS

- a. During the performance of this contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et. Seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other contract.
- b. Contractor shall include the nondiscrimination and compliance provisions of paragraph (a) in all subcontracts to perform work under the contract.
- c. The Contractor will not discriminate in the provision of services against any person with protected status as provided by state and federal law and described in paragraph (a).
- d. For the purpose of this contract, distinctions made on the basis of a person's protected status as noted in paragraph (a) include, but are not limited to, the following: denying a participant any service or providing a benefit to a participant which is different, or is provided in a different manner or at a different time or place from that provided to other participants under this contract; subjecting a participant to segregation or separate treatment in any matter related to his or her receipt of any service; restricting a participant in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether he or she satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit.
- e. The Contractor will take affirmative action to ensure that intended beneficiaries are provided services without regard to their protected status as noted in paragraph (a).
- f. The Contractor agrees that complaints alleging discrimination in the delivery of services by the Contractor or his or her subcontractor because of a person's protected status as noted in paragraph (a) will be resolved by the State through the Department of Public Health's Affirmative Action/Discrimination Complaint Process.
- g. The Contractor shall, subject to the approval of the Department of Public Health, establish procedures under which service participants are informed of their rights to file a complaint alleging discrimination or a violation of their civil rights with the Department of Public Health.
- h. The Contractor shall operate the program or activity in such a manner that it is readily accessible to and usable by mentally or physically handicapped persons pursuant to 45 Code of Federal Regulations, Parts 84, Sections 84.21 and 84.22.
- i. The Contractor shall keep records, submit required compliance reports, and permit state access to records in order that the State can determine compliance with the nondiscrimination requirements pursuant to 45 Code of Federal Regulations, Parts 80, 84, and 90, Sections 80.6, 84.61, and 90.42.

HIPAA Business Associate Addendum

I. Recitals – STANDARD RISK

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations:").
- B. The California Department of Public Health ("CDPH") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI").
- C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- E. As set forth in this Agreement Contractor, here and after, is the Business Associate of CDPH that provides services, arranges, performs or assists in the performance of functions or activities on behalf of CDPH and creates, receives, maintains, transmits, uses or discloses PHI.
- F. CDPH and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- G. The purpose of the Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- H. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

1. Permitted Uses and Disclosures of PHI by Business Associate

- A. **Permitted Uses and Disclosures.** Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of CDPH, provided that such use or disclosure would not violate the HIPAA regulations, if done by CDPH.
- B. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum, Business Associate may:
 - 1) **Use and disclose for management and administration.** Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will

HIPAA Business Associate Addendum

remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

- 2) **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to CDPH. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of CDPH with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of CDPH.

2. Responsibilities of Business Associate

Business Associate agrees:

- A. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of CDPH; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide CDPH with its current and updated policies.
- C. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI, and provide data security procedures for the use of CDPH at the end of the contract period. These steps shall include, at a minimum:
- 1) Complying with all of the data system security precautions listed in this Agreement or in an Exhibit incorporated into this Agreement; and
 - 2) Complying with the safeguard provisions in the Department's Information Security Policy, embodied in Health Administrative Manual (HAM), sections 6-1000 et seq. and in the Security and Risk Management Policy in the Information Technology Section of the State Administrative Manual (SAM), sections 4840 et seq., in so far as the security standards in these manuals apply to Business Associate's operations. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with CDPH.

- D. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.
- E. **Business Associate's Agents.** To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of CDPH, agree to the same restrictions and conditions that apply to Business Associate with respect to

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such PHI, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI; and to incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents or subcontractors.

- F. **Availability of Information to CDPH and Individuals.** To provide access as CDPH may require, and in the time and manner designated by CDPH (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to CDPH (or, as directed by CDPH), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for CDPH that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for CDPH health plans; or those records used to make decisions about individuals on behalf of CDPH. Business Associate shall use the forms and processes developed by CDPH for this purpose and shall respond to requests for access to records transmitted by CDPH within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- G. **Amendment of PHI.** To make any amendment(s) to PHI that CDPH directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by CDPH.
- H. **Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from CDPH, or created or received by Business Associate on behalf of CDPH, available to CDPH or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by CDPH or by the Secretary, for purposes of determining CDPH's compliance with the HIPAA regulations.
- I. **Documentation of Disclosures.** To document and make available to CDPH or (at the direction of CDPH) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- J. **Notification of Breach.** During the term of this Agreement:
- 1) **Discovery of Breach.** To notify CDPH **immediately by telephone call plus email or fax** upon the discovery of breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person, or **within 24 hours by email or fax** of any suspected security incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the CDPH contract manager, the CDPH Privacy Officer and the CDPH Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the CDPH ITSD Help Desk. Business Associate shall take:
 - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
 - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
 - 2) **Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, to notify the CDPH contract manager(s), the CDPH Privacy Officer, and the CDPH Information Security Officer of:
 - i. What data elements were involved and the extent of the data involved in the breach,

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- ii. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,
 - iii. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized,
 - iv. A description of the probable causes of the improper use or disclosure; and
 - v. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
- 3) **Written Report.** To provide a written report of the investigation to the CDPH contract managers, the CDPH Privacy Officer, and the CDPH Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- 4) **Notification of Individuals.** To notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The CDPH contract managers, the CDPH Privacy Officer, and the CDPH Information Security Officer shall approve the time, manner and content of any such notifications.
- 5) **CDPH Contact Information.** To direct communications to the above referenced CDPH staff, the Contractor shall initiate contact as indicated herein. CDPH reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Agreement or Addendum.

CDPH Contract Manager	CDPH Privacy Officer	CDPH Information Security Officer
See Exhibit C for Contract Manager information	Privacy Officer Office of Legal Services California Department of Public Health P.O. Box 997377, MS 0505 Sacramento, CA 95899-7377 Email: privacyofficer@cdph.ca.gov Telephone: (916) 440-7432	Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6300 Sacramento, CA 95899-7413 Email: cdphsio@cdph.ca.gov Telephone: ITSD Help Desk (916) 440-7000 or (800) 579-0874

- K. **Employee Training and Discipline.** To train and use reasonable measures to ensure compliance with the requirements of this Addendum by employees who assist in the performance of functions or activities on behalf of CDPH under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Addendum, including by termination of employment. In complying with the provisions of this section K, Business Associate shall observe the following requirements:
- 1) Business Associate shall provide information privacy and security training, at least annually, at its own expense, to all its employees who assist in the performance of functions or activities on behalf of CDPH under this Agreement and use or disclose PHI.

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- 2) Business Associate shall require each employee who receives information privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.
- 3) Business Associate shall retain each employee's written certifications for CDPH inspection for a period of three years following contract termination.

3. Obligations of CDPH

CDPH agrees to:

- A. **Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that CDPH produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices:
<http://www.cdph.ca.gov/programs/services/programs/Pages/PrivacyOffice.aspx>.
- B. **Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. **Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that CDPH has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. **Requests Conflicting with HIPAA Rules.** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by CDPH.

4. Audits, Inspection and Enforcement

From time to time, CDPH may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the CDPH Privacy Officer in writing. The fact that CDPH inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does CDPH's:

- A. Failure to detect or
- B. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of CDPH's enforcement rights under this Agreement and this Addendum.

5. Termination

- A. **Termination for Cause.** Upon CDPH's knowledge of a material breach of this Addendum by Business Associate, CDPH shall:
 - 1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by CDPH;
 - 2) Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or

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- 3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.

- B. **Judicial or Administrative Proceedings.** Business Associate will notify CDPH if it is named as a defendant in a criminal proceeding for a violation of HIPAA. CDPH may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDPH may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- C. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from CDPH (or created or received by Business Associate on behalf of CDPH) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of this Addendum to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

6. Miscellaneous Provisions

- A. **Disclaimer.** CDPH makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon CDPH's request, Business Associate agrees to promptly enter into negotiations with CDPH concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. CDPH may terminate this Agreement upon thirty (30) days written notice in the event:
- 1) Business Associate does not promptly enter into negotiations to amend this Addendum when requested by CDPH pursuant to this Section or
 - 2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that CDPH in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to CDPH at no cost to CDPH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDPH, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than CDPH or

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Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

- E. **Interpretation.** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. **Regulatory References.** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. **Survival.** The respective rights and obligations of Business Associate under Section 6.C of this Addendum shall survive the termination or expiration of this Agreement.
- H. **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.